

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JOHN P. HOUSER,

Plaintiff,

Case No. 3:20-cv-1399-J-34JRK

vs.

JUUL LABS, INC., previously d/b/a as
PAX LABS, INC. and PLOOM INC., et al.,

Defendants.

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ORDER

THIS CAUSE is before the Court sua sponte. Plaintiff initiated the instant action on December 13, 2020, by filing a seventeen-count Complaint and Jury Demand (Doc. 1). Upon review, the Court finds that the Complaint constitutes an impermissible “shotgun pleading.” A shotgun complaint contains “multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.” See Weiland v. Palm Beach Cnty. Sheriff’s Office, 792 F.3d 1313, 1321 & n.11 (11th Cir. 2015) (collecting cases). As a result, “most of the counts . . . contain irrelevant factual allegations and legal conclusions.” Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002). Consequently, in ruling on the sufficiency of a claim, the Court is faced with the onerous task of sifting out irrelevancies in order to decide for itself which facts are relevant to a particular cause of action asserted. See id. Here, taking the “shotgun” form to a level this Court has never seen before and hopes to never see again, Plaintiff incorporates by reference not only the allegations of all the preceding Counts, but

all allegations of each of the succeeding Counts as well, such that each Count amounts to a combination of all seventeen Counts of the Complaint pled not just once, but at least twice. See Complaint ¶¶ 631, 652, 671, 685, 704, 721, 733, 754, 764, 776, 790, 805, 824, 864, 874, 887, 903.

In the Eleventh Circuit, shotgun pleadings of this sort are “altogether unacceptable.” Cramer v. State of Fla., 117 F.3d 1258, 1263 (11th Cir. 1997); see also Cook v. Randolph County, 573 F.3d 1143, 1151 (11th Cir. 2009) (“We have had much to say about shotgun pleadings, none of which is favorable.”) (collecting cases). Indeed, the Eleventh Circuit has engaged in a “thirty-year salvo of criticism aimed at shotgun pleadings, and there is no ceasefire in sight.” See Weiland, 792 F.3d at 1321 & n.9 (collecting cases). As the Court in Cramer recognized, “[s]hotgun pleadings, whether filed by plaintiff or defendant, exact an intolerable toll on the trial court’s docket, lead to unnecessary and unchanneled discovery, and impose unwarranted expense on the litigants, the court and the court’s parajudicial personnel and resources.” Cramer, 117 F.3d at 1263. When faced with the burden of deciphering a shotgun pleading, it is the trial court’s obligation to strike the pleading on its own initiative, and force the plaintiff to replead to the extent possible under Rule 11, Federal Rules of Civil Procedure. See id. (admonishing district court for not striking shotgun complaint on its own initiative); see also Weiland, 792 F.3d at 1321 n.10 (“[W]e have also advised that when a defendant fails to [move for a more definite statement], the district court ought to take the initiative to dismiss or strike the shotgun pleading and give the plaintiff an opportunity to replead.”). Accordingly, the Court will strike the Complaint and provide Plaintiff with an opportunity to file a corrected Complaint.

In addition, the Court finds that Plaintiff has failed to sufficiently allege this Court's subject matter jurisdiction over this action. Federal courts are courts of limited jurisdiction and therefore have an obligation to inquire into their subject matter jurisdiction. See Kirkland v. Midland Mortg. Co., 243 F.3d 1277, 1279-80 (11th Cir. 2001). This obligation exists regardless of whether the parties have challenged the existence of subject matter jurisdiction. See Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999) (“[I]t is well settled that a federal court is obligated to inquire into subject matter jurisdiction sua sponte whenever it may be lacking”). “In a given case, a federal district court must have at least one of three types of subject matter jurisdiction: (1) jurisdiction under a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).” Baltin v. Alaron Trading, Corp., 128 F.3d 1466, 1469 (11th Cir. 1997).

Diversity jurisdiction requires complete diversity or that “all plaintiffs must be diverse from all defendants.” Univ. of S. Ala., 168 F.3d at 412; see also Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828 (1989) (“When a plaintiff sues more than one defendant in a diversity action, the plaintiff must meet the requirements of the diversity statute for each defendant or face dismissal”). The Eleventh Circuit has recognized that, for purposes of establishing diversity jurisdiction, “a limited liability company is a citizen of any state of which a member of the company is a citizen.” Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C., 374 F.3d 1020, 1022 (11th Cir. 2004) (per curiam). Thus, to properly determine the citizenship of a limited liability company, the Court must consider the citizenship of each of its members. See id.

Plaintiff names numerous Defendants to this action, three of which are limited liability companies (LLC). Specifically, as to Defendant Eby-Brown Company, LLC, Plaintiff asserts that its “managing member” is “Performance Food Group, Inc., a Colorado corporation with its principal place of business in Richmond, Virginia.” See Complaint ¶ 48. However, this allegation is insufficient to establish the citizenship of Eby-Brown because Plaintiff identifies only the “managing member” of this limited liability company. To establish diversity jurisdiction, the Court needs information regarding the citizenship of all the members of a limited liability company, not just the managing members. See Rolling Greens MHP, L.P., 374 F.3d at 1022; Underwriters at Lloyd’s London v. Osting-Schwinn, 613 F.3d 1079, 1092 (11th Cir. 2010) (remanding case in which party invoking the court’s diversity jurisdiction did not disclose the identity and citizenship of each member of an unincorporated entity). It may be that the “managing member” identified in the Complaint is the only one that exists. However, because of the manner in which that member is identified, the Court cannot determine whether Plaintiff has listed all of Eby-Brown’s members, or just the managing member. Accordingly, the Court finds Plaintiff’s allegations as to the citizenship of Defendant Eby-Brown Company, LLC to be insufficient to allow the Court to satisfy its obligation to assure complete diversity exists before exercising jurisdiction over this action.¹

¹ Carefully ascertaining the citizenship of the parties and whether the Court has subject matter jurisdiction over this action is more than just an academic exercise, as is evident from two Eleventh Circuit cases decided in 2017. See Thermoset Corp. v. Bldg. Materials Corp of Am., 849 F.3d 1313, 1315-16 (11th Cir. 2017) (vacating summary judgment order after three years of litigation where court determined on appeal that the pleadings below had not sufficiently alleged the citizenship of a defendant limited liability company, and upon further inquiry, found that the defendant limited liability company had a non-diverse member); see also Purchasing Power, LLC v. Bluestem Brands, Inc., 851 F.3d 1218, at 1222, 1228 (11th Cir. 2017) (discussing whether sanctions were warranted in a case where summary judgment was reversed on appeal after the appellate court discovered that the pleadings did not sufficiently allege the citizenship of the plaintiff LLC, leading to the realization that there was no diversity jurisdiction) (“While the requirements of diversity jurisdiction in this scenario are complicated, they are the law. No party in this case acted with bad intentions,

In light of the foregoing, the Court will give Plaintiff an opportunity to file a corrected complaint which properly establishes diversity of citizenship between the parties such that this Court has jurisdiction over this action, and corrects the shotgun nature of the Complaint. Accordingly, it is

ORDERED:

1. The Complaint and Jury Demand (Doc. 1) is **STRICKEN**.
2. Plaintiff shall file a corrected complaint² curing the shotgun nature of the Complaint and the jurisdictional deficiencies on or before **January 5, 2021**. Failure to do so may result in a dismissal of this action.
3. Defendants shall respond to the corrected complaint in accordance with the requirements of Rule 15 of the Federal Rules of Civil Procedure.

DONE AND ORDERED at Jacksonville, Florida on December 15, 2020.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record
Pro Se Parties

but the result was a colossal waste of time and effort. We trust that the damage done to the parties' credibility, finances, and time is enough of a sanction to curb their conduct and to serve as a warning to future diversity jurisdiction litigants. In the end, when the parties do not do their part, the burden falls on the courts to make sure parties satisfy the requirements of diversity jurisdiction. We must be vigilant in forcing parties to meet the unfortunate demands of diversity jurisdiction in the 21st century.”).

² The filing of the corrected complaint does not affect any right Plaintiff may have to amend as a matter of course pursuant to Federal Rule of Civil Procedure 15(a)(1).